

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE

v.

JOHN K. ZUTELL,

Defendant.

)  
)  
)  
)  
)  
)  
)

I.D. No. 1710014674

**ORDER**

Submitted: June 7, 2023

Decided: July 25, 2023

**AND NOW TO WIT**, this 25<sup>th</sup> day of July 2023, upon consideration of John K. Zutell (“Defendant”)’s Motion for Modification/Reduction of Sentence under Rule 35, the sentence imposed upon the Defendant, and the record in this case, it appears to the Court that:

1. On June 4, 2018, Defendant pled guilty to Dealing in Child Pornography and Possession of Child Pornography.<sup>1</sup> On September 28, 2018, Defendant was sentenced to: for Dealing in Child Pornography, 15 years at Level V, suspended after the minimum mandatory of 2 years (at Level V Transitions Sex Offender Program), for 4 years and 6 months at Level IV DOC Discretion, suspended after 1 year Level IV DOC Discretion, followed by 4 years at Level III under 11 *Del. C.* § 4333(d)(1);<sup>2</sup> and for Possession of Child Pornography, 3 years at

---

<sup>1</sup> D.I. 8.

<sup>2</sup> Due to the disturbing nature of videos and photos depicting young children and Defendant’s

Level V, suspended for 1 year at Level III.<sup>3</sup> Multiple conditions were also imposed upon Defendant, among which was no access to the Internet.<sup>4</sup>

2. On October 26, 2018, Defendant filed his first Rule 35 motion to reduce his minimum mandatory Level V sentence.<sup>5</sup> The Court denied the motion.<sup>6</sup>

3. Defendant now files this Motion for Modification of Sentence asking this Court to reduce his probation by one year, effectively to end his sentence now. In support, he states that he has been compliant with his sentence, and reiterates much of what was presented in the first Rule 35 motion, including his health, the age and health of his mother, and his need to access VA online services for mental and physical health issues.<sup>7</sup> Defendant also asks the Court to review a statute passed in 2020 as to “sentence reduction due to medical and mental health.”<sup>8</sup>

4. Under Rule 35(b), the Court may reduce/modify the “term or conditions of partial confinement or probation, at any time,”<sup>9</sup> But “[t]he court will not consider repetitive requests for reduction of sentence.”<sup>10</sup> A motion is considered repetitive

---

admissions, the State requested—and the Court agreed—that an extended period of probation was warranted.

<sup>3</sup> D.I. 11.

<sup>4</sup> *Id.*

<sup>5</sup> D.I. 12. Defendant previously sought reduction of Level VI to “house arrest” (1) due to his health, to include a double hernia; (2) to assist his sick stepfather and mother in Pennsylvania; (3) mental health treatments; and for (4) limited access to the Internet to treat his mental health needs through online services offered through the Veterans Affairs (VA).

<sup>6</sup> D.I. 13.

<sup>7</sup> D.I. 15.

<sup>8</sup> *Id.*

<sup>9</sup> Del. Super. Ct. Crim. R. 35(b).

<sup>10</sup> *Id.*

when it “is preceded by an earlier Rule 35(b) motion, even if the subsequent motion raises new arguments.”<sup>11</sup> The repetitive motion bar applies to the request for reduction or modification of a term of partial confinement or probation.<sup>12</sup> Rule 35 does not allow the Court to use its discretion to ignore this bar.<sup>13</sup> Thus, Defendant’s request is procedurally barred.

5. Even if not barred, his request would be denied. Defendant is serving a longer probationary sentence under 11 *Del. C.* § 4333(d)(1) due to the nature of his conviction, which includes Tier II sex offender registration under 11 *Del. C.* § 4121(d)(2). The probation is appropriate for all the reasons set forth at the time of sentencing. A requirement that he needs to obtain permission from his PO to see his mother is not a basis to modify the term of his probation. He further fails to establish the unavailability of necessary medical and/or mental health treatment while on probation. Further, given the nature of these offenses involving young children, internet access is prohibited. Defendant fails to provide reasons why access to his VA services is unavailable in-person or through other means.

**IT IS SO ORDERED** that Defendant’s Motion for Modification of Sentence is **SUMMARILY DISMISSED**.

---

<sup>11</sup> *State v. Culp*, 152 A.3d 141, 144 (Del. 2016).

<sup>12</sup> *See Teat v. State*, 31 A.3d 77, 2011 WL 4839042, at \*1 (Del. 2011) (Table).

<sup>13</sup> *Culp*, 152 A.3d at 145 (reversing the Superior Court's decision to grant the defendant's motion for modification where the motion was repetitive and untimely).

/s/ Vivian L. Medinilla  
Vivian L. Medinilla  
Judge

oc: Prothonotary  
cc: Defendant  
Department of Justice  
Investigative Services Office